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COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Terms and Charges Set Forth in Proposed Revisions to M.D.T.E. Tariff No. 17, filed by New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts on April 21, 2000, regarding Digital Subscriber Line Services and Line Sharing

DTE 98-57, Phase III

AT&T'S INITIAL BRIEF REGARDING THE PHASE III

MOTIONS FOR PARTIAL RECONSIDERATION

AT&T Communications of New England, Inc. ("AT&T") respectfully urges the Department to allow the motion for partial reconsideration filed by WorldCom, Inc. ("WorldCom"), and to deny the motion for partial reconsideration filed by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon").

Verizon pledged that in Massachusetts it would abide by the results of the ongoing New York DSL proceeding. See Ex. VZ-MA-3, Stern Pre-Filed Direct, at 4, 14; see also Stern, Tr. 8/1/2000 at 245-246. The Department ruled that it will hold Verizon to this promise, and that Verizon must "import whatever technical and operational resolutions are reached in New York to Massachusetts." Phase III Order at 41. On October 31, 2000, the New York Public Service Commission ("PSC") issued an order in its DSL proceeding, which should resolve several of the key issues raised in the pending motions for reconsideration. (1)

WorldCom's motion asks the Department to reconsider Verizon's obligation to permit line splitting in connection with a UNE-P arrangement. This issue was recently decided by the New York PSC, which ordered Verizon to make line splitting available in connection with an unbundled network element platform ("UNE-P") arrangement. NY DSL Order at 13-17. Because Verizon must now do so in New York, the Department's Phase III Order mandates that it must also do so in Massachusetts. For this reason alone, WorldCom's motion should be allowed.

In contrast, Verizon's motion raises three issues, and should be denied as to each of them. With respect to each issue, Verizon merely regurgitates old arguments that the Department cleaned away once already in its Phase III Order. As Verizon concedes, a motion for reconsideration "should not attempt to reargue issues considered and decided in the main case." Verizon's Motion for Reconsideration at 3, citing Commonwealth Electric Company, D.P.U. 92-3C-1A, at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A, at 3 (1991). But that is all that Verizon does here. Verizon does not identify any previously undisclosed facts or point to any material and substantial mistake in the Department's prior analysis, and thus does not meet its heavy burden of demonstrating that some extraordinary circumstance requires a reversal of the Department's Phase III Order on any of the three issues re-argued by Verizon.

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Argument.

I. Now that Verizon Has Been Ordered in New York to Provide Access to the High Frequency Spectrum for Carriers Providing Voice Over UNE-P, It Must Provide the Same UNE-P Line Splitting in Massachusetts.

In a decision issued one month after the Department's Phase III Order, the New York PSC has ordered Verizon to permit CLECs to use the high frequency spectrum of loops that are purchased in a UNE-P arrangement, by permitting CLECs to purchase a line splitter and have it installed on a UNE-P voice line. See NY DSL Order at 10-17, 27. Verizon must do so as soon as practicable, but in any case no later than March 2001. Id. The PSC explained that "[t]here is no dispute that the engineering processes entailed in splitting a line for a UNE-P voice customer and sharing a line for a Verizon voice customer are identical: there is no physical difference." Id. at 11. The PSC found that an arbitrary restriction on such line splitting is anticompetitive, for example because it would prevent a line sharing customer - who currently receives voice service from Verizon and data service over the same loop from a data LEC - from migrating to a new voice provider without also terminating their existing data service. Id. at 13-14. Thus, the PSC ordered Verizon to provide line splitting over UNE-P because it is technically feasible, and necessary for CLECs to offer truly competitive services. Id. at 15-17. The PSC found that its order requiring line splitting over UNE-P is consistent with federal law, and rejected Verizon's argument that under the FCC's Line Sharing Order it is not required to support such an arrangement. Id. at 12, 15.

Although the Department declined in its Phase III Order to require that line splitting be made available in a UNE-P arrangement, it determined that Massachusetts consumers should have access at least to the same competitive options that are required in New York. Phase III Order at 41. WorldCom's is quite correct when it points out that line splitting in conjunction with a UNE-P arrangement is not a "flavor" of line sharing, and thus it was not addressed in the FCC's line sharing order. See WorldCom's Motion for Reconsideration. AT&T respectfully urges the Department to correct this aspect of its Phase III Order. But given the Department's determination that any line splitting or line sharing arrangement provided by Verizon in New York must also be provided to CLECs in Massachusetts, this portion of the Department's discussion is no longer determinative.

In sum, AT&T requests that the Department enforce its prior order, by expressly requiring Verizon to offer in Massachusetts the same UNE-P line splitting arrangements that it must now offer in New York.

II. Verizon's Motion for Partial Reconsideration Is Without Merit, and Should Be Denied.

A. The Department Should Maintain The 40-Day Interval for Splitter and Cable Augments.

Verizon asks the Department to reverse course with respect to the maximum interval for the provisioning of line splitter or cable capacity augmentation. See Verizon's Motion at 4. Verizon had proposed a 76 business day interval for such augmentation jobs; Rhythms and Covad countered by seeking an interval of 30 business days or less. See Phase III Order at 53-59.

In its Motion for Partial Reconsideration, Verizon reiterates assertions that the Department has already carefully analyzed and rejected. Verizon insists that "[n]othing in the record shows that the 40 business-day interval is a reasonable, or even a consistently attainable, installation standard." Verizon's Motion for Reconsideration, at 4. That assertion is false. The Department recounted in some detail the extensive evidence which demonstrates that a 40-day interval for cable and splitter augmentation is reasonable: The Department carefully analyzed each step of an augmentation job, and determined that a 40 business day interval is appropriate. Id. at 59-73.

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Verizon also asserts that "[n]o state within Verizon's operating territory (i.e., the former Bell Atlantic service area) has adopted augment intervals for line sharing as short as this 40-business-day standard." Verizon's Motion for Reconsideration, at 4. But the New York PSC has now found that "[a] 45 business day interval is appropriate for all augments - cable and splitter - for line sharing and line splitting." NY DSL Order at 9. This is independent confirmation that the Department's order requiring a 40-day augmentation interval is reasonable, and readily achievable by Verizon.

B. The Department's Rejection of Verizon's Loop Conditioning and Qualification Charges Was Appropriate.

The Department rejected Verizon's proposed charges for DSL loop condition and loop qualification. See Phase III Order at 104. Verizon does not like this result, but its sole response is to reargue the same points that the Department has already expressly considered and rejected in its Phase III Order. See Verizon's Motion at 9-13. In particular, Verizon insists that "[t]he Department's ruling ... contravenes the FCC's directives that ILECs are entitled as a matter of federal law to recover the costs of conditioning loops to provide xDSL services...." Verizon's Motion at 9. The Department already considered, and rejected, this assertion. See Phase III Order at 105-106. It explained that:

It would be inappropriate and inconsistent for the Department to allow Verizon to base its loop rates on the costs of a fiber feeder, which may be greater than the costs of copper feeder in that context, while it bases its line sharing rates on the costs of a copper feeder, which are greater than the costs of fiber in the context of line sharing. If the FCC in fact were to require the Department to assume the use of copper feeder for calculating TELRIC for line sharing, we would allow Verizon to charge for both loop qualification and loop conditioning, but we also would have to direct Verizon to recalculate its loop costs in order to maintain consistency among our various TELRIC analyses. Otherwise, Verizon would be able to tack back and forth between different network assumptions based solely on whether the network assumption produced higher rates for Verizon in each instance.

Phase III Order at 106.

Verizon's motion says nothing new. It is not a proper motion for reconsideration, and should be rejected.

C. The Department's Order that Verizon Propose Tariff Language to Facilitate Line Sharing or Line Splitting in a DLC Environment Is Appropriate.

Finally, Verizon is also unhappy that the Department is working to decide, sooner rather than later, the best ways for CLECs to be given access to the high frequency portion of loops that involve fiber feeder and copper distribution. See Verizon's Motion at 13-16. The Department has voiced its concern "that many Massachusetts consumers may be shut out of the DSL market unless provisions are made to allow for line sharing over fiber-fed loops." Phase III Order at 86. This concern is entirely appropriate.

Verizon concedes that to address this concern, CLECs must be given access to line cards, installed at the Remote Terminal ("RT"), that would perform line splitting and DSLAM (i.e., multiplexing) functions: according to Verizon, it is trying to determine whether Verizon-owned line cards would be more efficient and easier to implement than Covad's proposal for "plug and play" use of CLEC-owned line cards, and for that reason seeks more time to develop a tariff proposal and wants desperately to avoid proposing tariff terms that would implement Covad's proposal if it is adopted in Phase I. See Verizon's Motion at 15. It is hard to know what to make of this ploy, given that just weeks ago Verizon was insisting that it would never purchase and supply line splitters for use in central offices regardless of how much easier and more efficient that may make the provisioning of line sharing or line splitting. See Phase III Order at 27-32. It appears that Verizon may be more

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interested in delaying resolution of how to accommodate xDSL services on loops currently served using digital loop carrier ("DLC") feeder.

Verizon essentially acknowledges that the effect of its request would be further to delay competitive offering of xDSL services to Massachusetts consumers, when it argues that that such delay should be acceptable. Verizon makes this point as follows:

[I]f the Department has any potential competitive concerns, Verizon MA would agree to give all carriers, including Verizon's separate data affiliate ("SDA"), access to these potential capabilities at the same time and subject to the same non-discriminatory rates, terms and conditions. In the meantime, if Verizon seeks and obtains an FCC waiver prior to the establishment of the SDA, Verizon MA will not utilize this arrangement on a retail basis until a wholesale offering is made available to all CLECs in Massachusetts.

Verizon's Motion at 15-16.

This is not a sufficient response, for reasons that the New York PSC has articulated. Verizon should not be allowed to "impair competitors' access to these customers [that are served on DLC feeder] simply by choosing not to provide them DSL itself," but rather should be required to support line sharing or line splitting in a DLC environment even if Verizon itself is not prepared to take advantage of such capabilities in its own retail offerings. NY DSL Order at 25. The Department acted entirely properly when it directed Verizon to file tariff language that would implement Covad's "plug and play" proposal, which should be available wherever it is technically feasible. Phase III Order at 87. The mere fact that Verizon may also wish to propose another alternative, in which Verizon would purchase and own line cards for use in RTs, should not delay other carriers' ability to use available equipment and installation alternatives. Nor does it require any delay in the shaping of the tariff language requested by the Department. Once again, Verizon's plea that the Department change its mind does not satisfy the stringent standards that apply to motions for reconsideration.

Conclusion.

For the foregoing reasons, AT&T respectfully requests that the Department: (1) allow WorldCom's motion for partial reconsideration, and order that Verizon-Massachusetts offer line splitting in conjunction with UNE-P, just as it will be doing in New York; and (2) deny Verizon's motion for partial reconsideration.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on November 9, 2000.

1. 1 See New York Public Service Commission Opinion No. 00-12, "Opinion and Order Concerning Verizon's Wholesale Provision of DSL Capabilities," in Case 00-C-0127, Proceeding on Motion of the Commission to Examine Issues Concerning the Provision of Digital Subscriber Line Services (October 31, 2000) ("NY DSL Order"). AT&T asks the Department to take administrative notice of this order, a copy of which is attached hereto.